



General Assembly

January Session, 2011

Raised Bill No. 1192

LCO No. 4632

04632_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

***AN ACT CONCERNING THE PROCESSING OF COMPLAINTS FILED
WITH THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46a-83 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) [Within] Not later than twenty days after the filing of any
4 discriminatory practice complaint pursuant to subsection (a) or (b) of
5 section 46a-82, or an amendment to such complaint adding an
6 additional respondent, the commission shall cause the complaint to be
7 served upon the respondent together with a notice (1) identifying the
8 alleged discriminatory practice, and (2) advising of the procedural
9 rights and obligations of a respondent under this chapter. The
10 respondent shall file a written answer to the complaint under oath
11 with the commission within thirty days of receipt of the complaint,
12 provided a respondent may request, and the commission may grant,
13 for good cause shown, one extension of time of [fifteen] ten days
14 within which to file an answer to a complaint. The answer to any
15 complaint alleging a violation of section 46a-64c or 46a-81e shall be
16 filed within ten days of receipt.

17 (b) [Within ninety days of] Not later than eighty days after the filing
18 of the respondent's answer to the complaint, the executive director or
19 the executive director's designee shall review the file. The review shall
20 include the complaint, the respondent's answer and the responses to
21 the commission's requests for information, if any, and the
22 complainant's comments, if any, to the respondent's answer and
23 information responses. If the executive director or the executive
24 director's designee determines that the complaint fails to state a claim
25 for relief or is frivolous on its face, that the respondent is exempt from
26 the provisions of this chapter or that there is no reasonable possibility
27 that investigating the complaint will result in a finding of reasonable
28 cause, the complaint shall be dismissed. This subsection shall not
29 apply to any complaint alleging a violation of section 46a-64c or 46a-
30 81e. The executive director shall report the results of the executive
31 director's determinations pursuant to this subsection to the
32 commission quarterly during each year.

33 (c) The executive director of the commission or his designee shall
34 determine the most appropriate method for processing any complaint
35 pending after review in accordance with subsection (b) of this section.
36 The commission may conduct mandatory mediation sessions,
37 expedited or extended fact-finding conferences or complete
38 investigations or any combination thereof during the investigatory
39 process for the purpose of finding facts, promoting the voluntary
40 resolution of complaints or determining if there is reasonable cause for
41 believing that a discriminatory practice has been or is being committed
42 as alleged in the complaint. As used in this section and section 46a-84,
43 reasonable cause means a bona fide belief that the material issues of
44 fact are such that a person of ordinary caution, prudence and judgment
45 could believe the facts alleged in the complaint. A complaint may be
46 dismissed if a complainant, after notice and without good cause, fails
47 to attend a mandatory mediation session. A mediator may
48 recommend, but not order, a resolution of the complaint. A complaint
49 may be dismissed if the respondent has eliminated the discriminatory
50 practice complained of, taken steps to prevent a like occurrence in the

51 future and offered full relief to the complainant, even though the
52 complainant has refused such relief.

53 (d) (1) Before issuing a finding of reasonable cause or no reasonable
54 cause, the investigator shall afford each party and his representative an
55 opportunity to provide written or oral comments on all evidence in the
56 commission's file, except as otherwise provided by federal law or any
57 other provision of the general statutes. The investigator shall consider
58 such comments in making his determination. The investigator shall
59 make a finding of reasonable cause or no reasonable cause in writing
60 and shall list the factual findings on which it is based not later than one
61 hundred [ninety] seventy-five days from the date of the determination
62 based on the review of the complaint, conducted pursuant to
63 subsection (b) of this section, except that for good cause shown, the
64 executive director or his designee may grant no more than two
65 extensions of the investigation of [three months] ninety days each.

66 (2) If the investigator makes a determination that there is reasonable
67 cause to believe that a violation of section 46a-64c has occurred, the
68 complainant and the respondent shall have twenty days from receipt
69 of notice of the reasonable cause finding to elect a civil action in lieu of
70 an administrative hearing pursuant to section 46a-84. If either the
71 complainant or the respondent requests a civil action, the commission,
72 through the Attorney General or a commission legal counsel, shall
73 commence an action pursuant to subsection (b) of section 46a-89
74 within ninety days of receipt of the complainant's or the respondent's
75 notice of election of a civil action. If the Attorney General or a
76 commission legal counsel, and a commissioner, believe that injunctive
77 relief, punitive damages or a civil penalty would be appropriate, such
78 relief, damages or penalty may also be sought pursuant to said
79 subsection. Any civil action brought under this subdivision shall be
80 limited to such claims, counterclaims, defenses or the like that would
81 be required for the commission to have jurisdiction over the complaint
82 had the complaint remained with the commission for disposition. If
83 the Attorney General or a commission legal counsel determines that a

84 material mistake of law or fact has been made in such finding of
85 reasonable cause, the Attorney General or a commission legal counsel
86 may decline to bring a civil action and, in such case, shall remand the
87 file to the investigator for further action. The investigator shall
88 complete any such action not later than ninety days after receipt of
89 such file.

90 (e) If the investigator issues a finding of no reasonable cause or if the
91 complaint is dismissed (1) for failure to state a claim for relief, (2)
92 because it is frivolous on its face, (3) because the respondent is exempt
93 from the provisions of this chapter, or (4) because there is no
94 reasonable possibility that investigating the complaint will result in a
95 finding of reasonable cause or if the complaint is dismissed pursuant
96 to subsection (c) of this section, the complainant may request
97 reconsideration of such finding or dismissal with the executive director
98 of the commission, or the executive director's designee, not later than
99 fifteen days from the issuance of such finding or dismissal. The
100 executive director of the commission, or the executive director's
101 designee, shall reconsider or reject within ninety days of the issuance
102 of such finding or dismissal. The executive director of the commission,
103 or the executive director's designee, shall conduct such additional
104 proceedings as may be necessary to render a decision on the request
105 for reconsideration.

106 (f) Upon a determination that there is reasonable cause to believe
107 that a discriminatory practice has been or is being committed as
108 alleged in the complaint, an investigator shall attempt to eliminate the
109 practice complained of by conference, conciliation and persuasion
110 [within] not later than fifty days [of] after a finding of reasonable
111 cause. The refusal to accept a settlement shall not be grounds for
112 dismissal of any complaint.

113 (g) No commissioner or employee of the commission may disclose,
114 except to the parties or their representatives, what has occurred in the
115 course of such endeavors provided the commission may publish the

116 facts in the case and any complaint which has been dismissed and the
117 terms of conciliation when a complaint has been adjusted. Each party
118 and his representative shall have the right to inspect and copy
119 documents, statements of witnesses and other evidence pertaining to
120 his complaint, except as otherwise provided by federal law or any
121 other provision of the general statutes.

122 (h) In the investigation of any complaint filed pursuant to this
123 chapter, the commission may issue subpoenas requiring the
124 production of records and other documents relating to the complaint
125 under investigation.

126 (i) The executive director of the commission or his designee may
127 enter an order of default against a respondent (1) who, after notice,
128 fails to answer a complaint in accordance with subsection (a) of this
129 section or within such extension of time as may have been granted or
130 (2) who fails to answer interrogatories issued pursuant to subdivision
131 (11) of section 46a-54 or fails to respond to a subpoena issued pursuant
132 to subsection (h) of this section and subdivision (9) of section 46a-54,
133 provided the executive director or his designee shall consider any
134 timely filed objection or (3) who, after notice and without good cause,
135 fails to attend a mandatory mediation session. Upon entry of an order
136 of default, the executive director or his designee shall appoint a
137 presiding officer to enter, after notice and hearing, an order
138 eliminating the discriminatory practice complained of and making the
139 complainant whole. The commission or the complainant may petition
140 the Superior Court for enforcement of any order for relief pursuant to
141 section 46a-95.

142 Sec. 2. Section 46a-82e of the general statutes is repealed and the
143 following is substituted in lieu thereof (*Effective October 1, 2011*):

144 (a) Notwithstanding the failure of the Commission on Human
145 Rights and Opportunities to comply with the time requirements of
146 sections 46a-83, as amended by this act, and 46a-84 with respect to a
147 complaint before the commission, the jurisdiction of the commission

148 over any such complaint shall be retained.

149 (b) The commission shall report annually to the judiciary committee
150 of the General Assembly and the Governor: (1) The number of cases in
151 the previous fiscal year that exceeded the time frame, including
152 authorized extensions, set forth in subsection (d) of section 46a-83, as
153 amended by this act; (2) the reasons for the failure to comply with the
154 time frame, including, but not limited to, reasons related to (A) the
155 unavailability of regional locations to conduct mediation sessions, fact-
156 finding conferences or other investigational meetings, or (B) a
157 respondent's unavailability for mediation sessions, fact-finding
158 conferences or other investigational meetings; (3) the number of
159 continuances granted, in the aggregate and with respect to individual
160 complainants, due to a respondent's unavailability to attend a
161 mediation session, fact-finding conference or other investigational
162 meeting; [(3)] (4) the number of actions brought pursuant to subsection
163 (d) of this section and the results thereof; and [(4)] (5) the commission's
164 recommendations for legislative action, if any, necessary for the
165 commission to meet the statutory time frame.

166 (c) If a complaint has been pending for more than twenty-one
167 months from the date of filing and the commission has not issued a
168 finding of reasonable cause or no reasonable cause, the executive
169 director shall send a notice by certified mail, return receipt requested,
170 advising the complainant of his right to request a release of jurisdiction
171 in accordance with section 46a-101. The executive director or his
172 designee shall investigate the cause for the delay in issuing a finding.
173 After such investigation, the executive director may, given the facts
174 and circumstances of the case, schedule a date certain for issuance of a
175 finding of reasonable cause or no reasonable cause.

176 (d) (1) If a complaint has been pending for more than two years after
177 the date of filing pursuant to section 46a-82, and if the investigator fails
178 to issue a finding of reasonable cause or no reasonable cause by the
179 date ordered by the executive director of the commission pursuant to

180 subsection (c) of this section, the complainant or respondent may
181 petition the superior court for the judicial district of Hartford for an
182 order requiring the commission to issue a finding of reasonable cause
183 or no reasonable cause by a date certain. The petitioner shall submit
184 the petition on forms prescribed by the Office of the Chief Court
185 Administrator.

186 (2) The clerk, upon receipt of the petition and if the clerk finds it to
187 be in the proper form, shall fix a date for the hearing and sign the
188 notice of hearing. The hearing date shall be no more than thirty days
189 after the clerk signs the notice. Service shall be made on the
190 commission and all persons named in the discriminatory practice
191 complaint at least twenty days prior to the date of hearing by United
192 States mail, certified or registered, postage prepaid, return receipt
193 requested, without the use of a state marshal or other officer. Service
194 on the commission shall be made on the executive director of the
195 commission or a commission legal counsel. [Within] Not later than five
196 days [of] after service, the petitioner shall file with the court an
197 affidavit stating the date and manner in which a copy of the petition
198 was served and attach to the affidavit the return receipts indicating
199 delivery of the petition.

200 (3) [Within] Not later than ten days after receipt of the petition, any
201 party, including the commission, may file an answer. The commission
202 and all persons named in the discriminatory practice complaint shall
203 have the right to appear and be heard at the hearing.

204 (4) If the commission and parties agree on a date certain, the court
205 shall order the commission to issue a finding by said date. If the
206 allegations of the petition are contested, the court shall hold a hearing
207 on the petition and issue an appropriate order. Hearing of oral
208 argument on the petition shall take precedence over other matters in
209 the court, as provided in section 46a-96. The court shall award court
210 costs and attorney's fees to the petitioner, provided such party is a
211 "person", as defined in section 4-184a, unless the commission shows

212 good cause for not issuing the finding of reasonable cause or no
213 reasonable cause within two years of the date of filing or the date
214 ordered by the executive director for the investigator to issue such
215 finding, whichever is later. An award of court costs and attorney's fees
216 shall be subject to the court's discretion, but shall not exceed a total of
217 five hundred dollars.

218 (5) This subsection shall not apply to complaints initiated by the
219 commission or to pattern or practice or systemic cases.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	46a-83
Sec. 2	October 1, 2011	46a-82e

Statement of Purpose:

To: (1) Expedite the processing of complaints filed with the Commission on Human Rights and Opportunities; and (2) require the commission to include in its annual report to the Judiciary committee and the Governor specified reasons for delay in processing complaints, including the number of continuances granted due to a respondent's unavailability to attend proceedings.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]